

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. 467 90 3898  
Issued to: Ronald Scott MANLEY

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2348

Ronald Scott MANLEY

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 30 December 1982, an Administrative Law Judge of the United States Coast Guard at HOUSTON, TEXAS revoked Appellant's seaman's document upon finding him guilty of the charge of "conviction for a drug law violation." The specification found proved alleges that being the holder of the document above captioned, on or about 5 June 1981, Appellant was convicted of possession of marijuana by the County Court of Harris County, Texas.

The hearing was held at Houston, Texas on 12 November 1982.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the record of Appellant's conviction.

In defense, Appellant made several motions related to the admissibility of the court records, the legal effect of the Texas conviction, and the legal adequacy of the Coast Guard proceeding.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved.

The Decision and Order was served on 6 January 1983. Appeal was timely filed on 4 February 1983 and perfected on 20 May 1983.

FINDINGS OF FACT

On 5 June 1981, Appellant was the holder of the captioned document and was convicted for the possession of less than two ounces of marijuana by the County Criminal Court of Harris County, Texas and was fined \$100.00. The record neither provides

information regarding the offense for which Appellant was convicted and his character, nor sets forth the reason that the Investigating Officer decided to charge Appellant in this case.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. In his brief Appellant sets forth several bases for appeal. Because of the disposition of this case as set forth below, they are not discussed at this time.

APPEARANCE: Stephen David Dix, Esq. of Schimmel and Dix, 8300 Bissonnet, Suite 170, Houston, Texas.

#### OPINION

Under 46 USC 239b the Coast Guard has discretion to revoke or not a license or document following a narcotic drug law conviction. This discretion has not been delegated to Administrative Law Judge but is retained by the Commandant. The Investigating Officer, in accordance with paragraph 71-6-30(12) of the Coast Guard's Marine Safety Manual, COMDTINST M16000.3, has discretion to bring charges or not. See also Appeal Decision 2168 (COOPER). So that I can properly exercise my discretion, it is necessary that the record contain information related to whether or not the document in question should be revoked. Appeal Decisions 2303(HODGMAN) and 2330 (STRUDWICK). In addition, the Administrative Procedure Act requires that the denial of a petition or request by an agency "be accompanied by a brief statement of the grounds for denial." 5 USC 555e. See also Appeal Decision 2311 (STRUDWICK).

Because the record in this case does not contain the required information, I am unable to properly exercise my discretion under 46 USC 239b or meet the requirements of the Administrative Procedure Act. I am, therefore, unable to AFFIRM the order of the Administrative Law Judge on the record as it presently exists.

This defect can be corrected by remanding the case for further proceedings to supply the required information. In so doing, I note that HODGMAN and both STUDWICK decisions were issued subsequent to the Decision and Order in this case. As a consequence the administrative Law Judge may not have been fully aware of the requirements discussed in them.

#### CONCLUSION

The record is insufficient to support the action to revoke Appellant's document. The case should be remanded to the Administrative Law Judge for further proceedings.

ORDER

The record is REMANDED to the Administrative Law Judge. He shall provide the Investigating Officer the opportunity to present evidence as required by the (COOPER), (HODGMAN), and both (STRUDWICK) decisions supra. The Appellant shall be allowed to present evidence related to whether revocation is appropriate in this case. At such time as the necessary evidence has been included, the record shall be returned for further action on the Appeal.

Should the Investigating Officer present no further evidence, the Administrative Law Judge, in this case, is authorized to and shall dismiss the charge and specification.

J. S. GRACEY  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 12th day of Jan., 1984.